



1997 SENATE BILL 174

April 16, 1997 - Introduced by Senators RISSER, BUETTNER, CLAUSING, PLACHE, COWLES and ROSENZWEIG, cosponsored by Representatives DUFF, BOCK, J. LEHMAN, ROBSON, NOTESTEIN, BALDWIN, BLACK, RYBA, BOYLE, R. YOUNG, L. YOUNG, VANDER LOOP, LA FAVE, KELSO, OTT and WASSERMAN. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

1 **AN ACT to renumber and amend** 101.123 (1) (a), 101.123 (2) (c) and 101.123 (9);
2 **to amend** 66.124 (1), 66.124 (4), 101.123 (title), 101.123 (1) (f), 101.123 (9)
3 (title), 165.60, 254.69 (2) (am), 254.69 (2) (c), 254.69 (2) (g), 254.74 (1) (a), 254.85
4 (1) and 254.85 (4); and **to create** 36.11 (27), 101.123 (2) (a) 11., 101.123 (2) (a)
5 12., 101.123 (2) (c) 2. and 3. and 101.123 (9) (a) of the statutes; **relating to:**
6 prohibiting the use of cigarettes and tobacco products on the premises of
7 shopping malls and in the common areas of privately owned residential
8 buildings, regulating smoking in restaurants and in private schools, colleges
9 and universities, authorizing the department of health and family services to
10 enforce smoking restrictions in restaurants, authorizing the board of regents
11 of the University of Wisconsin System to prohibit the use of cigarettes and
12 tobacco products on property that is subject to its jurisdiction and authorizing
13 a person owning, leasing or renting a building to prohibit the use of cigarettes

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1 and tobacco products in the area of that building that is subject to that person's
2 control.

Analysis by the Legislative Reference Bureau

Current law generally prohibits smoking in public conveyances, inpatient health care facilities, indoor movie theaters, offices and passenger elevators, retail establishments, public waiting rooms, and enclosed indoor areas of a local or state unit of government. Current law also prohibits smoking in restaurants whose seating capacity is more than 50 persons and whose receipts from the sale of beer or liquor, or both, amount to 50% or less of the restaurant's total receipts, and in educational facilities that offer state-approved or state-licensed instruction or training. The department of justice (DOJ), sheriffs, constables, and other local police officers are authorized to enforce the law.

This bill expands the coverage of the existing law to prohibit smoking in indoor shopping malls, private educational facilities, common areas of privately owned residential buildings and restaurants whose seating capacity is more than 30 persons and whose receipts from the sale of beer or liquor, or both, amount to 50% or less of the restaurant's receipts. In addition, the bill authorizes the board of regents of the University of Wisconsin System to prohibit the use of cigarettes and tobacco products on property that is subject to its jurisdiction and provides that a person who owns, rents or leases a building, or an area of a building, may prohibit smoking in that building or area of that building. This bill also requires the department of health and family services to enforce concurrently with DOJ the prohibition against smoking in restaurants.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 36.11 (27) of the statutes is created to read:

4 36.11 (27) PROHIBITION OF TOBACCO. The board may prohibit the use of
5 cigarettes, as defined in s. 139.30 (1), and tobacco products, as defined in s. 139.75
6 (12), on property that is subject to its jurisdiction.

7 **SECTION 2.** 66.124 (1) of the statutes is amended to read:

8 66.124 (1) An employe or agent of a local health department designated by the
9 department of health and family services under s. 254.69 (2) or the department of

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1 agriculture, trade and consumer protection under s. 97.41 may enter, at reasonable
2 hours, any premises for which the local health department issues a permit under s.
3 97.41 or 254.69 (2) to inspect the premises, secure samples or specimens, examine
4 and copy relevant documents and records or obtain photographic or other evidence
5 needed to enforce subch. VII of ch. 254, ch. 97, s.101.123 with respect to restaurants
6 or s. 254.47, relating to those premises. If samples of food are taken, the local health
7 department shall pay or offer to pay the market value of those samples. The local
8 health department, department of health and family services or department of
9 agriculture, trade and consumer protection shall examine the samples and
10 specimens secured and shall conduct other inspections and examinations needed to
11 determine whether there is a violation of subch. VII of ch. 254, ch. 97, s.101.123 with
12 respect to restaurants or s. 254.47, rules adopted by the departments promulgated
13 under those statutes subch. VII of ch. 254, ch. 97 or s. 254.47, ordinances adopted by
14 the village, city or county or regulations adopted by the local board of health under
15 s. 97.41 (7) or 254.69.

16 **SECTION 3.** 66.124 (4) of the statutes is amended to read:

17 66.124 (4) A proceeding under this section, or the issuance of a permit for the
18 premises after notification of procedures under this section, does not constitute a
19 waiver by the village, city or county of its authority to rely on a violation of ch. 97,
20 s. 101.123 with respect to restaurants, s. 254.47 or subch. VII of ch. 254 or any rule
21 adopted promulgated under those statutes ch. 97, s. 254.47 or subch. VII of ch. 254
22 as the basis for any subsequent suspension or revocation of the permit or any other
23 enforcement action arising out of the violation.

24 **SECTION 4.** 101.123 (title) of the statutes is amended to read:

25 **101.123** (title) **Clean indoor air Smoking restrictions.**

SENATE BILL 174**SECTION 5**

1 **SECTION 5.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag) and
2 amended to read:

3 101.123 (1) (ag) “Educational facility” means any building used principally for
4 educational purposes in which a school, college or university, whether public or
5 private, is located or a course of instruction or training program is offered ~~that has~~
6 ~~been approved or licensed by a state agency or board.~~

7 **SECTION 6.** 101.123 (1) (f) of the statutes is amended to read:

8 101.123 (1) (f) “Restaurant” means an establishment defined in s. 254.61 (5)
9 with a seating capacity of more than ~~50~~ 30 persons.

10 **SECTION 7.** 101.123 (2) (a) 11. of the statutes is created to read:

11 101.123 (2) (a) 11. Indoor shopping malls.

12 **SECTION 8.** 101.123 (2) (a) 12. of the statutes is created to read:

13 101.123 (2) (a) 12. Common areas of privately owned residential buildings.

14 **SECTION 9.** 101.123 (2) (c) of the statutes is renumbered 101.123 (2) (c) (intro.)
15 and amended to read:

16 101.123 (2) (c) (intro.) This section does not limit the any of the following:

17 1. The authority of any county, city, village or town to enact ordinances or of any
18 school district to adopt policies that, complying with the purpose of this section,
19 protect the health and comfort of the public.

20 **SECTION 10.** 101.123 (2) (c) 2. and 3. of the statutes are created to read:

21 101.123 (2) (c) 2. The authority of the board of regents of the University of
22 Wisconsin System under s. 36.11 (27) to prohibit the use of cigarettes and tobacco
23 products on property that is subject to its jurisdiction.

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1 3. The authority of a person who owns, rents or leases a building, or an area
2 of a building, to prohibit smoking in that building or area of that building owned,
3 leased or rented by, or under the control of, that person.

4 **SECTION 11.** 101.123 (9) (title) of the statutes is amended to read:

5 101.123 (9) (title) ~~INJUNCTION~~ ENFORCEMENT AND INJUNCTION.

6 **SECTION 12.** 101.123 (9) of the statutes is renumbered 101.123 (9) (b) and
7 amended to read:

8 101.123 (9) (b) Notwithstanding ~~s. 165.60~~ par. (a), state or local officials or any
9 affected party may institute an action in any court with jurisdiction to enjoin
10 repeated violations of this section.

11 **SECTION 13.** 101.123 (9) (a) of the statutes is created to read:

12 101.123 (9) (a) The department of justice, together with sheriffs, constables
13 and other local police officers, shall enforce this section as provided under s. 165.60.
14 In addition, the department of health and family services under s. 254.69 shall
15 enforce this section with respect to restaurants as provided under s. 254.85.

16 **SECTION 14.** 165.60 of the statutes is amended to read:

17 **165.60 Law enforcement.** The department of justice is authorized to enforce
18 ss. 101.123 (2), ~~(5) and (8)~~ and (5), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
19 and 945.04 and is invested with the powers conferred by law upon sheriffs and
20 municipal police officers in the performance of those duties. This section does not
21 deprive or relieve sheriffs, constables and other local police officers of the power and
22 duty to enforce those sections, and those officers shall likewise enforce those sections,
23 nor does this section deprive or relieve the department of health and family services,
24 or a local health department that is an agent of the department of health and family
25 services under s. 254.69, of the power and duty to enforce s. 101.123 (2) and (5) with

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1 respect to restaurants, and those departments shall likewise enforce s. 101.123 (2)
2 and (5).

3 **SECTION 15.** 254.69 (2) (am) of the statutes is amended to read:

4 254.69 (2) (am) In the administration of this subchapter, s. 101.123 with
5 respect to restaurants or s. 254.47, the department may enter into a written
6 agreement with a local health department with a jurisdictional area that has a
7 population greater than 5,000, which designates the local health department as the
8 department's agent in issuing permits to and making investigations or inspections
9 of hotels, restaurants, temporary restaurants, tourist rooming houses, bed and
10 breakfast establishments, campgrounds and camping resorts, recreational and
11 educational camps and public swimming pools. In a jurisdictional area of a local
12 health department without agent status, the department of health and family
13 services may issue permits, collect permit fees established by rule under s. 254.68
14 and make investigations or inspections of hotels, restaurants, temporary
15 restaurants, tourist rooming houses, bed and breakfast establishments,
16 campgrounds and camping resorts, recreational and educational camps and public
17 swimming pools. If the department designates a local health department as its
18 agent, the department or local health department may require no permit for the
19 same operations other than the permit issued by the local health department under
20 this subsection. The department shall coordinate the designation of agents under
21 this subsection with the department of agriculture, trade and consumer protection
22 to ensure that, to the extent feasible, the same local health department is granted
23 agent status under this subsection and under s. 97.41. Except as otherwise provided
24 by the department, a local health department granted agent status shall regulate all

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1 types of establishments for which this subchapter permits the department of health
2 and family services to delegate regulatory authority.

3 **SECTION 16.** 254.69 (2) (c) of the statutes is amended to read:

4 254.69 (2) (c) The department shall provide education and training to agents
5 designated under this subsection to ensure uniformity in the enforcement of this
6 subchapter, s. 101.123 with respect to restaurants, s. 254.47 and rules promulgated
7 under this subchapter and s. 254.47.

8 **SECTION 17.** 254.69 (2) (g) of the statutes is amended to read:

9 254.69 (2) (g) A village, city or county may adopt ordinances and a local board
10 of health may adopt regulations regarding the permittees and premises for which the
11 local health department is the designated agent under this subsection, which are
12 stricter than this subchapter, s. 101.123 with respect to restaurants, s. 254.47 or
13 rules promulgated by the department of health and family services under this
14 subchapter or s. 254.47. No such provision may conflict with this subchapter or with
15 department rules.

16 **SECTION 18.** 254.74 (1) (a) of the statutes is amended to read:

17 254.74 (1) (a) Administer and enforce this subchapter, the rules promulgated
18 under this subchapter and any other rules or laws relating to the public health and
19 safety in hotels, tourist rooming houses, bed and breakfast establishments,
20 restaurants, vending machine commissaries, vending machines and vending
21 machine locations, including s. 101.123 with respect to restaurants.

22 **SECTION 19.** 254.85 (1) of the statutes is amended to read:

23 254.85 (1) The department may enter, at reasonable hours, any premises for
24 which a permit is required under this subchapter or s. 254.47 to inspect the premises,
25 secure samples or specimens, examine and copy relevant documents and records or

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1 obtain photographic or other evidence needed to enforce this subchapter, s. 101.123
2 with respect to restaurants or s. 254.47. If samples of food are taken, the department
3 shall pay or offer to pay the market value of the samples taken. The department shall
4 examine the samples and specimens secured and shall conduct other inspections and
5 examinations needed to determine whether there is a violation of this subchapter,
6 s. 101.123 with respect to restaurants, s. 254.47 or rules promulgated by the
7 department under this subchapter or s. 254.47.

8 **SECTION 20.** 254.85 (4) of the statutes is amended to read:

9 254.85 (4) A proceeding under this section, or the issuance of a permit for the
10 premises after notification of procedures under this section, does not constitute a
11 waiver by the department of its authority to rely on a violation of this subchapter,
12 s. 101.123 with respect to restaurants, s. 254.47 or any rule promulgated under this
13 subchapter or s. 254.47 as the basis for any subsequent suspension or revocation of
14 the permit or any other enforcement action arising out of the violation.

15 (END)